



Kurt E. Floren
Agricultural Commissioner/
Director of Weights and Measures

COUNTY OF LOS ANGELES
Department of
Agricultural Commissioner/
Weights and Measures

12300 Lower Azusa Road
Arcadia, California 91006-5872
<http://acwm.co.la.ca.us>

Robert G. Atkins
Chief Deputy

September 6, 2005

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**RESCIND AND RE-AWARD WEED ABATEMENT TRACTOR
CONTRACTS FOR HOURLY MOWING, FISCAL YEAR 2005-2006
(ALL DISTRICTS - 3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Rescind both mowing contracts with KPS Property Maintenance (KPS) for Zone 3 (Contract 74908) and Zones 6 and 9 (Contract 75297).
2. Re-award and instruct the Chair to sign the attached agreement with Ray Byers and Company (Ray Byers) for Zones 3 and 9 for \$46,625 and to sign the attached agreement with Gardner Tractor Service (Gardner) for Zone 6 in the amount of \$11,000, effective upon Board approval through June 30, 2006.
3. Authorize the Agricultural Commissioner/Director of Weights and Measures to amend these contracts in an amount not to exceed 10% of the individual contract amounts.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the above action is to enable the Agricultural Commissioner/Weights and Measures Department (ACWM), Weed Abatement Division to continue providing essential fire prevention services throughout the unincorporated areas of the County and contract cities.

A meeting was held on June 16, 2005, at the ACWM main office in Arcadia with the contractor, KPS, to discuss their current performance under Contract No. 74908 and upcoming work under Contract No. 75297. KPS was in the second contract year under 74908 and first contract year under 75297. The contractor voluntarily offered to resign from both contracts at the meeting, which was later confirmed in writing. The resignation is attached as Exhibit I.

The success of the weed abatement program depends on the timely abatement of fire hazards posed by weeds and brush. An integral part of the annual program requires the use of specialized power equipment which is furnished under contract by private vendors. Therefore, we recommend that both KPS contracts be rescinded and the work be re-awarded to the second highest scoring bidders, for each specific zone, as follows:

New Contract, Zones 3 and 9, Hourly Mowing, Ray Byers, \$46,625.

New Contract, Zone 6, Hourly Mowing, Gardner, \$11,000.

Implementation of Strategic Plan Goals

This action supports the County's Strategic Plan Goals of Service Excellence (Goal 1), Organizational Effectiveness (Goal 3), Fiscal Responsibility (Goal 4) and Community Services (Goal 6).

The use of vendors allows the ACWM to provide an efficient, cost-effective response to the seasonal workload demands of hazardous weed and brush abatement.

FISCAL IMPACT/FINANCING

These contracts are 100% revenue offset and there is no increase in ACWM's net County cost. The contract increases are fully-offset by anticipated weed abatement revenue through property tax liens and direct charges.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The attached new agreements represent mowing services for Zones 3 and 9 (\$46,625) and Zone 6 (\$11,000) that would be re-awarded to Ray Byers and Gardner, respectively, effective upon Board approval through June 30, 2006. Both contractors had originally submitted the second highest scoring proposals during the solicitation process. These new agreements may be extended upon mutual agreement for two (2) one-year periods.

ACWM has determined that the Living Wage Program (County Code Chapter 2.201) does not apply to the recommended agreements.

The agreements have been reviewed by County Counsel and are approved as to form.

The Honorable Board of Supervisors
September 6, 2005
Page 3

CONTRACTING PROCESS

Subsection 1.3.1.c of the Contract General Specifications provides for awarding the contract to the next lowest acceptable bidder in the original bid if a contractor resigns from his or her contractual agreement (Exhibit II).

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The recommended Board action will enable the ACWM to abate the present hazardous conditions through the end of the 2005-2006 fiscal year.

CONCLUSION

When approved, ACWM requires one (1) signed copy of the agreements and minute order of the Board's action.

Respectfully submitted,

KURT E. FLOREN
Agricultural Commissioner/
Director of Weights and Measures

KEF:RGA:RS:cm
RESCINDHRMOWINGPART2.wpd

Attachment

c: Chief Administrative Officer
County Counsel
Auditor-Controller



COUNTY OF LOS ANGELES
Department of
Agricultural Commissioner/
Weights and Measures

Kurt E. Floren
Agricultural Commissioner/
Director of Weights and Measures

12300 Lower Azusa Road
Arcadia, California 91006-5872
<http://acwm.co.la.ca.us>

Robert G. Atkins
Chief Deputy

June 16, 2005

Kim Belton
KPS Property Maintenance
P.O. Box 5340
Ventura, CA 93005-0340

Dear Ms. Belton:

RESCIND WEED ABATEMENT CONTRACTS 74908 AND 75297
ZONES 3, 6 AND 9, HOURLY MOWING

Thank you for agreeing to meet on June 16, 2005, with deputies Sherlan Neblett and Dan Papilli, and me at our main office in Arcadia. After the meeting we felt more confident of your company's ability to perform the contracted weed abatement handwork. During the meeting, you voluntarily offered to resign mowing contract numbers 74908 and 75297. Pursuant to that, we are rescinding the awards of both contracts. Your signature below confirms you agree to resign from contractual agreement numbers 74908 and 75297. Please sign and return to our office, using the self-addressed stamped envelope, by June 27, 2005.

We look forward to working with KPS Property Maintenance as a handwork vendor for what promises to be a very challenging fire season!

Very truly yours,

KURT E. FLOREN
Agricultural Commissioner/
Director of Weights and Measures

CONTRACTOR:
KPS Property Maintenance

RAYMOND B. SMITH
Bureau Chief
Weed Hazard and Pest Management Bureau

By: Kim Belton

KEF:RBS:cm
RESCINDHRMOWINGPART2.wpd

Date

Enc.

1.3 CONTRACT SPECIFICATIONS/BIDDER REQUIREMENTS

1.3.1 Duration of Contract

- a. The contract shall run for one fiscal year or a length of time as directed by the Agricultural Commissioner/Weights and Measures Department.
- b. If a Contractor is unable to meet all or a portion of his or her obligation, the Agricultural Commissioner/Director of Weights and Measures may assign another contracted vendor to perform the work required.
- c. If a Contractor is dismissed or resigns from his or her contractual agreement, the Agricultural Commissioner/Director of Weights and Measures may award this portion of the contract to the next lowest acceptable Bidder in the original bid. If these Vendors do not meet the required specifications, the County may choose to go out to bid.

WEED ABATEMENT CONTRACT

THIS AGREEMENT, made and entered into for the period from date of Board approval by and between the County of Los Angeles hereinafter referred to as "COUNTY" and Ray Byers and Company, a contractor designated by the Department of Agricultural Commissioner/Weights and Measures, hereinafter referred to as "CONTRACTOR".

RECITALS

WHEREAS, the CONTRACTOR, as will appear by reference to the proceeding of the Board of Supervisors of the County of Los Angeles, has been awarded the contract for the work and services hereinafter mentioned:

1. COMPLIANCE WITH CONTRACT

PURSUANT TO, and in compliance with the Invitation for Bids (IFB), Sections 1 through 4, the General Specifications, Information for Bidders, Required Documents and Bid Proposal(s), and the undersigned bidder, having familiarized himself with the terms and conditions of the contract, the prices stated, and subject to the instructions and conditions of the General Specifications and other contract documents, agrees to perform, within the time required to be performed, and to provide and furnish any and all of the labor, materials, tools, expendable equipment, and all utility and transportation service necessary to perform the contract and complete in a workmanlike manner all of the work required.

1 **2. TERM OF AGREEMENT**

2 Subject to the termination provisions set forth in paragraph 11 and 12 herein, the term of the
3 Agreement shall be for period commencing upon Board approval through June 30, 2006. It may be
4 extended two times upon mutual agreement. Each extension period shall be for 12 months upon
5 mutual agreement on terms acceptable to the COUNTY.

6 CONTRACTOR shall notify the Agricultural Commissioner when this Contract is within six (6)
7 months from the expiration of the term as provided for herein above. Upon occurrence of this event,
8 Contractor shall send written notification to Agricultural Commissioner at the address herein provided
9 in paragraph 11.

10 **3. CONTRACTOR OBLIGATIONS**

11 CONTRACTOR shall perform Weed Abatement services as directed by the COUNTY pursuant to
12 paragraph 1.5 of the General Specifications. The COUNTY guarantees no minimum service
13 requirement during the term of this agreement.

14 **4. BILLING AND PAYMENT**

15 CONTRACTOR shall invoice COUNTY twice monthly in arrears for work performed in accordance
16 with paragraph 1.6.5 of the General Specifications. The CONTRACTOR'S services, and rate of
17 service to be provided, are itemized in attached Appendix A.

18 **5. TERMINATION FOR IMPROPER CONSIDERATION**

19 COUNTY may, by written notice to CONTRACTOR, immediately terminate the right of
20 CONTRACTOR to proceed under this Agreement if it is found that consideration, in any form, was
21 offered or given by CONTRACTOR, either directly or through an intermediary, to any County officer,
22 employee or agent with the intent of securing the Agreement or securing favorable treatment with
 respect to the award, amendment or extension of the Agreement or the making of any determinations

1 with respect to the CONTRACTOR's performance pursuant to the Agreement. In the event of such
2 termination, COUNTY shall be entitled to pursue the same remedies against CONTRACTOR as it
3 could pursue in the event of default by the CONTRACTOR.

4 CONTRACTOR shall immediately report any attempt by a County officer or employee to solicit such
5 improper consideration. The report shall be made either to the County manager charged with the
6 supervision of the employee or to the COUNTY Auditor-Controller's Employee Fraud Hotline at (800)
7 544-6861.

8 Among other items, such improper consideration may take the form of cash, discounts, service, the
9 provision of travel or entertainment, or tangible gifts.

10 **6. CONSIDERATION OF GAIN/GROW PROGRAM PARTICIPANTS FOR EMPLOYMENT**

11 Should CONTRACTOR require additional or replacement personnel after the effective date of the
12 Agreement, Contractor shall give consideration for any such employment openings to participants in
13 the COUNTY'S Department of Public Social Services' Greater Avenues for Independence (GAIN) or
14 General Relief Opportunity for Work Program who meet CONTRACTOR'S minimum qualifications
15 for the open position. The COUNTY will refer GAIN/GROW participants by job category to the
16 CONTRACTOR.

17 **7. INDEPENDENT CONTRACTOR STATUS**

18 In the performance of this Agreement, CONTRACTOR shall be and remain an independent
19 contractor. This Agreement is not intended, and shall not be construed, to create the relationship of
20 agent, servant, employee, partnership, joint venture, or association, as between the COUNTY and
21 CONTRACTOR.

22 **8. EMPLOYEES OF CONTRACTOR**

CONTRACTOR agrees that all persons furnishing services to COUNTY pursuant to this Agreement

are, for purposes of Worker's Compensation liability, employees solely of CONTRACTOR and not of COUNTY.

9. COMPLIANCE WITH ALL LAWS

CONTRACTOR agrees to comply with all applicable Federal, State and local laws, rules, regulations or ordinances, and all provisions required thereby to be included herein, are hereby incorporated by reference. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any loss, damage or liability resulting from a violation on the part of the CONTRACTOR of such laws, rules, regulations or ordinances.

10. INDEMNIFICATION

CONTRACTOR hereby agrees to indemnify, defend and hold harmless COUNTY and its Special Districts, elected and appointed officers, employees, and agents (COUNTY) from and against any and all liability and expense, including defense costs and legal fees, arising from or connected with claims and lawsuits for damages or worker's compensation benefits relating to CONTRACTOR'S operations or its services, which result from bodily injury, death, personal injury, or property damage (including damage to CONTRACTOR's property). CONTRACTOR shall not be obligated to indemnify for liability and expense arising from the active negligence of the COUNTY.

11. INSURANCE

Without limiting CONTRACTOR'S indemnification of COUNTY and during the terms of this Agreement, CONTRACTOR shall provide and maintain at its own expense the following programs of insurance. Such programs and evidence of insurance shall be satisfactory to the COUNTY and primary to and not contributing with any other insurance maintained by the COUNTY. Certificate(s) or other evidence of coverage and certified copy(ies) of additional insured endorsement(s), shall be delivered to Richard A. Russell, Chief Administrative Services, Department of Agricultural

1 Commissioner/Weights and Measures, 12300 Lower Azusa Rd., Arcadia, CA 91006-5872, prior to
2 commencing services under this Agreement, shall specifically identify this Agreement, and shall
3 contain the express condition that COUNTY is to be given written notice by registered mail at least
4 thirty (30) days in advance of any modification or termination of insurance.

5 Failure by CONTRACTOR to procure and maintain the required insurance shall constitute a material
6 breach of contract upon which COUNTY may immediately terminate or suspend this Agreement.

7 A. Liability: Such insurance shall be endorsed naming the COUNTY of Los Angeles as an
8 additional insured and shall include:

9 1. General Liability insurance written on a commercial general liability form or on a
10 comprehensive general liability form covering the hazards of premises/operations,
11 contractual, independent contractors, advertising, products/completed operations,
12 broad form property damage, and personal injury with a combined single limit of not
less than \$1,000,000 per occurrence.

13 a. If written with an annual aggregate limit, the policy limit should be three times
14 the above required occurrence limit.

15 b. If written on a claims made form, the CONTRACTOR shall be required to
16 provide an extended two year reporting period commencing upon termination
17 or cancellation of this agreement.

18 2. Comprehensive Auto Liability endorsed for all owned, non-owned, and hired vehicles
19 with a combined single limit of not less than \$300,000 per occurrence.

20 B. Worker's Compensation insurance in an amount and form to meet all applicable requirements
21 of the Labor Code of the State of California, including Employer's Liability with a \$1,000,000
22 limit, covering all persons the CONTRACTOR is legally required to cover.

1 C. Performance Surety: Such surety may be provided by one of the following forms and
2 conditioned upon faithful performance and satisfactory completion of services by
3 CONTRACTOR.

- 4 1. A Certificate of Deposit or an Irrevocable Letter of Credit payable to the COUNTY
5 upon demand and in an amount not less than \$500 per contract, but not to exceed
6 \$1,000.

7 **12. TERMINATION FOR CONTRACTOR'S DEFAULT**

8 A. COUNTY may, subject to the provisions outlined below, by written notice of default to
9 CONTRACTOR, terminate the whole or any part of this Agreement in any one of the
10 following circumstances:

- 11 1. If CONTRACTOR fails to perform the service within the specified time or any
12 extension thereof: or
13 2. If CONTRACTOR fails to perform any of the other provisions of this Agreement, or
14 so fails to make progress as to endanger performance of the Agreement in accordance
15 with its terms, and in either of these two circumstances does not cure such failure
16 within a period of ten (10) calendar days (or such longer period as the COUNTY may
17 authorize in writing) after receipt of notice from specifying such failure.

18 B. In the event COUNTY terminates this Agreement in whole or in part as provided in this
19 section, COUNTY may procure, upon such terms and in such manner as COUNTY may deem
20 appropriate, services similar to those terminated and CONTRACTOR shall be liable to
21 COUNTY for any excess costs for such similar services.

22 **13. ADDITIONAL TERMINATION PROVISIONS**

A. In addition to the termination provisions set forth in paragraph 11, the COUNTY may

1 terminate this Agreement in the event of the occurrence of any of the following:

- 2 1. INSOLVENCY OF THE CONTRACTOR: The CONTRACTOR shall be deemed to
- 3 be insolvent if it has ceased to pay its debts in the ordinary course of business or
- 4 cannot pay its debts as they become due, whether he has committed an act of
- 5 bankruptcy or not, and whether insolvent within the meaning of the Federal
- 6 Bankruptcy law or not;
- 7 2. The filing of a voluntary petition to have the CONTRACTOR declared bankrupt;
- 8 3. The appointment of a Receiver or Trustee for the CONTRACTOR;
- 9 4. The execution by the CONTRACTOR of an assignment for their benefit of creditors;
- 10 5. Failure of the CONTRACTOR to report bankruptcy proceedings to the COUNTY
- 11 within 14 days.

12 B. The rights and remedies of the COUNTY provided in this clause shall not be exclusive and

13 are in addition to any other rights and remedies provided by law or under this Agreement.

14 **14. LIMITATION OF COUNTY'S OBLIGATION DUE TO NON-APPROPRIATION OF FUNDS**

15 Notwithstanding any other provision of this Agreement, COUNTY shall not be obligated for

16 CONTRACTOR's performance hereunder or by any provision of this Agreement during any of

17 COUNTY's future fiscal years unless and until COUNTY's Board of Supervisors appropriates funds

18 applicable to this Agreement in COUNTY's budget for each such future fiscal year.

19 In the event that funds are not appropriated for such purpose, then this Agreement shall terminate as

20 of June 30 of the last fiscal year for which funds were appropriated. COUNTY shall notify

21 CONTRACTOR in writing of any such non-allocation of funds at the earliest possible date.

22 **15. GOVERNING LAW/VENUE**

This Agreement shall be construed in accordance with any governed by the laws of the State of

California Health and Safety Code, the Los Angeles Fire Code, California Government Code and various city codes and ordinances. Any action brought by either party on this Agreement shall be brought in the Los Angeles Superior Court.

16. INCLUSION OF OTHER LAWS/CLAUSES

CONTRACTOR agrees that each and every provisions of law and clause required to be inserted in the Agreement shall be deemed to be inserted herein and this Contract shall be read and be enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

17. NONDISCRIMINATION IN EMPLOYMENT

- A. By signature to this Agreement, CONTRACTOR certifies and agrees that all persons employed by such firm, its affiliate, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, color, religion, ancestry, national origin, age, sex, age, or physical or mental disability, marital status, or political affiliation and in compliance with all anti-discrimination laws of the United States of America and the State of California. CONTRACTOR further certifies and agrees that it will deal with its subcontractors, bidders or vendors without regard to or because of race, religion, ancestry, national origin, sex, age, or physical or mental disability, marital status, or political affiliation.
- B. CONTRACTOR shall allow the COUNTY access to its employment records during the regular business hours to verify compliance with these provisions when so requested by the COUNTY.
- C. If the COUNTY finds that any of the above provisions have been violated, the same shall constitute a material breach of contract upon which the COUNTY may determine to cancel,

1 terminate, or suspend the contract in accordance with paragraph 11 herein.

2 D. The parties agree that in the event the CONTRACTOR violates the anti-discrimination
3 provisions of the contract, the COUNTY shall, at its option, be entitled to a sum of ten (10)
4 percent of the contract amount or one thousand dollars (\$1000), whichever is greater, as
5 damages in lieu of canceling, terminating or suspending the contract pursuant to paragraph 11.

6 **18. ASSURANCE OF COMPLIANCE WITH CIVIL RIGHTS LAWS**

7 CONTRACTOR hereby assures that it will comply with Subchapter VI of the Civil Rights Act of
8 1964, 42 U.S.C. Sections 2000e(1) through 2000e (17), to the end that no person shall, on grounds of
9 race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political
10 affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be
11 otherwise subject to discrimination under this Agreement or under any project, program, or activity
supported by this Agreement.

12 **19. EMPLOYMENT ELIGIBILITY VERIFICATION**

13 CONTRACTOR warrants that it fully complies with all statutes and regulations regarding the
14 employment eligibility of aliens and others, and that all persons performing services under this
15 Agreement are eligible for employment in the United States. CONTRACTOR represents that it has
16 secured and retained all required documentation verifying employment eligibility of its subject
17 personnel. CONTRACTOR shall secure and retain verification of employment eligibility from any
18 new personnel in accordance with the applicable provisions of law. CONTRACTOR shall indemnify,
19 defend and hold COUNTY harmless from any employer sanctions or other liability which may be
20 assessed against COUNTY or CONTRACTOR.

21 **20. "CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT
COMPLIANCE PROGRAM"**

22 CONTRACTOR acknowledges that COUNTY has established a goal of ensuring that all individuals

1 who benefit financially from COUNTY through contract are in compliance with their court-ordered
2 child, family and spousal support obligations in order to mitigate the economic burden otherwise
3 imposed upon COUNTY and its taxpayers. As required by COUNTY'S Child Support Compliance
4 Program (County Code Chapter 2.200) and without limiting CONTRACTOR'S duty under this
5 contract to comply with all applicable provisions of law, CONTRACTOR warrants that it is now in
6 compliance and shall during the term of this contract maintain compliance with employment and wage
7 reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and
8 California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served
9 Wage and Earnings Withholding Orders or District Attorney Notices of Wage and Earnings
10 Assignment for Child or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and
11 Family Code Section 5246(b).

12 **21. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH**
13 **COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

14 Failure of CONTRACTOR to maintain compliance with the requirements set forth in paragraph 20
15 "CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT
16 COMPLIANCE PROGRAM" shall constitute a default by CONTRACTOR under this contract.
17 Without limiting the rights and remedies available to COUNTY under any other provision of this
18 contract, failure to cure such default within 90 days of notice by the Los Angeles County District
19 Attorney shall be grounds upon which the County Board of Supervisors may terminate this contract
20 pursuant to paragraph 12 "TERMINATION FOR CONTRACTOR'S DEFAULT."

21 **22. COUNTY'S QUALITY ASSURANCE PLAN**

22 The County or its agent will evaluate Contractor's performance under this agreement on not less than
an annual basis. Such evaluation will include assessing Contractor's compliance with all contract
terms and performance standards. Contractor deficiencies which County determines are severe or

continuing and that may place performance of the agreement in jeopardy if not corrected will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by the County and Contractor. If improvement does not occur consistent with the corrective action measures, County may terminate this agreement or impose other penalties as specified in this agreement.

23. CONTRACT DOCUMENT INCORPORATED

The Contract entered in by this Agreement consists of the following Contract documents, all of which are component parts of the Contract as if herein set out in full or attached hereto:

Invitation for Bids (IFB) dated February 2005
Bid Award Letter

All of the above-named contract documents are intended to be complementary. Work required by one of the above-named contract documents and not by other shall be done as if required by all.

24. MAXIMUM CONTRACT AMOUNT

COUNTY'S maximum obligation under this Agreement is **\$46,625.00** including all fees and expenses. (See attached Appendix A.) Any services provided by CONTRACTOR or expenses incurred in connection with this Agreement which exceed this amount shall be a gratuitous effort by CONTRACTOR for which COUNTY shall have no liability. The Agricultural Commissioner may increase the COUNTY'S maximum obligation under this Agreement by 10% of the total contract amount in the event additional services from the CONTRACTOR are required.

Any other change effecting the scope of work, price or other terms and conditions under this agreement must be approved by the County Board of Supervisors or Agricultural Commissioner.

CONTRACTOR shall maintain a system of record keeping that will allow CONTRACTOR to determine when it has incurred seventy-five percent (75%) of the total contract authorization under this Contract. Upon occurrence of this event, CONTRACTOR shall send written notification to the

Agricultural Commissioner at the address herein provided in paragraph 11.

25. CONTRACTOR RESPONSIBILITY AND DEBARMENT

A. Responsible Contractor

1. A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the Contract. It is the COUNTY'S policy to conduct business only with responsible Contractors.

B. Chapter 2.202 of the County Code

1. The CONTRACTOR is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the COUNTY acquires information concerning the performance of the CONTRACTOR on this or other Contracts which indicates that the CONTRACTOR is not responsible, the COUNTY may, in addition to other remedies provided in the Contract, debar the CONTRACTOR from bidding or being awarded, and/or performing work on County Contracts for a specified period of time not to exceed three (3) years, and terminate any or all existing Contracts the CONTRACTOR may have with the COUNTY.

C. Non-responsible Contractor

The COUNTY may debar a CONTRACTOR if the Board of Supervisors finds, in its discretion, that the CONTRACTOR has done any of the following: (1) violated a term of a Contract with the COUNTY, (2) committed an act or omission which negatively reflects on the CONTRACTOR'S quality, fitness or capacity to perform a Contract with the COUNTY or any other public entity, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business

1 honesty, or (4) made or submitted a false claim against the COUNTY or any other public
2 entity.

3 D. If there is evidence that the CONTRACTOR may be subject to debarment, the Department
4 will notify the CONTRACTOR in writing of the evidence which is the basis for the proposed
5 debarment and will advise the CONTRACTOR of the scheduled date for a debarment hearing
6 before the Contractor Hearing Board.

7 E. The Contractor Hearing Board will conduct a hearing where evidence on the proposed
8 debarment is presented. The CONTRACTOR and/or the CONTRACTOR'S representative
9 shall be given an opportunity to submit evidence at that hearing. After the hearing, the
10 Contractor Hearing Board shall prepare a proposed decision, which shall contain a
11 recommendation regarding whether the CONTRACTOR should be debarred, and, if so, the
12 appropriate length of time of the debarment. The Contractor and the Department shall be
13 provided an opportunity to object to the tentative proposed decision prior to its presentation
14 to the Board of Supervisors.

15 F. After consideration of any objections, or if no objections are submitted, a record of the
16 hearing, the proposed decision, and any other recommendation of the Contractor Hearing
17 Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have
18 the right to modify, deny, or adopt the proposed decision and recommendation of the Hearing
19 Board.

20 G. These terms shall also apply to Subcontractors of County Contractors.

21 **26. NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW**

22 The Contractor shall notify and provide to its employees, and shall require each subcontractor to notify
and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its

1 implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet
2 is set forth in Appendix C of the IFB and is also available on the Internet at www.babysafela.org for
3 printing purposes.

4 IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed by their fully
5 authorized officers as of the dates set for below:

6 COUNTY OF LOS ANGELES

7
8 By _____
Chair, Board of Supervisors

9 Attest: Violet Varona-Lukens
Executive Officer-Clerk of
10 the Board of Supervisors

11 By _____
Deputy

CONTRACTOR

12
13 APPROVED AS TO FORM
BY COUNTY COUNSEL:

Company Name

14 RAYMOND G. FORTNER, JR.

By _____

Date _____

15
16 By _____
Deputy

Address _____

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APPENDIX A

Ray Byers and Company
WEED ABATEMENT TRACTOR CONTRACT
(upon Board approval through June 30, 2006)

<u>Contract Awarded</u>	<u>Units/Parcels</u>	<u>Unit Price</u>	<u>Total Amount</u>
Zone 3, Hourly Mowing	325 hours	\$125.00	\$40,625.00
Zone 9, Hourly Mowing	50 hours	\$120.00	6,000.00
Total Amount of Contract Awarded			<u>\$46,625.00</u>

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WEED ABATEMENT CONTRACT

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RECITALS

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3 could pursue in the event of default by the CONTRACTOR.

4 CONTRACTOR shall immediately report any attempt by a County officer or employee to solicit such
5 improper consideration. The report shall be made either to the County manager charged with the
6 supervision of the employee or to the COUNTY Auditor-Controller's Employee Fraud Hotline at (800)
7 544-6861.

8 Among other items, such improper consideration may take the form of cash, discounts, service, the
9 provision of travel or entertainment, or tangible gifts.

10 **6. CONSIDERATION OF GAIN/GROW PROGRAM PARTICIPANTS FOR EMPLOYMENT**

11 Should CONTRACTOR require additional or replacement personnel after the effective date of the
12 Agreement, Contractor shall give consideration for any such employment openings to participants in
13 the COUNTY'S Department of Public Social Services' Greater Avenues for Independence (GAIN) or
14 General Relief Opportunity for Work Program who meet CONTRACTOR'S minimum qualifications
15 for the open position. The COUNTY will refer GAIN/GROW participants by job category to the
16 CONTRACTOR.

17 **7. INDEPENDENT CONTRACTOR STATUS**

18 In the performance of this Agreement, CONTRACTOR shall be and remain an independent
19 contractor. This Agreement is not intended, and shall not be construed, to create the relationship of
20 agent, servant, employee, partnership, joint venture, or association, as between the COUNTY and
21 CONTRACTOR.

22 **8. EMPLOYEES OF CONTRACTOR**

CONTRACTOR agrees that all persons furnishing services to COUNTY pursuant to this Agreement

are, for purposes of Worker's Compensation liability, employees solely of CONTRACTOR and not of COUNTY.

9. COMPLIANCE WITH ALL LAWS

CONTRACTOR agrees to comply with all applicable Federal, State and local laws, rules, regulations or ordinances, and all provisions required thereby to be included herein, are hereby incorporated by reference. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any loss, damage or liability resulting from a violation on the part of the CONTRACTOR of such laws, rules, regulations or ordinances.

10. INDEMNIFICATION

CONTRACTOR hereby agrees to indemnify, defend and hold harmless COUNTY and its Special Districts, elected and appointed officers, employees, and agents (COUNTY) from and against any and all liability and expense, including defense costs and legal fees, arising from or connected with claims and lawsuits for damages or worker's compensation benefits relating to CONTRACTOR'S operations or its services, which result from bodily injury, death, personal injury, or property damage (including damage to CONTRACTOR's property). CONTRACTOR shall not be obligated to indemnify for liability and expense arising from the active negligence of the COUNTY.

11. INSURANCE

Without limiting CONTRACTOR'S indemnification of COUNTY and during the terms of this Agreement, CONTRACTOR shall provide and maintain at its own expense the following programs of insurance. Such programs and evidence of insurance shall be satisfactory to the COUNTY and primary to and not contributing with any other insurance maintained by the COUNTY. Certificate(s) or other evidence of coverage and certified copy(ies) of additional insured endorsement(s), shall be delivered to Richard A. Russell, Chief Administrative Services, Department of Agricultural

1 Commissioner/Weights and Measures, 12300 Lower Azusa Rd., Arcadia, CA 91006-5872, prior to
2 commencing services under this Agreement, shall specifically identify this Agreement, and shall
3 contain the express condition that COUNTY is to be given written notice by registered mail at least
4 thirty (30) days in advance of any modification or termination of insurance.

5 Failure by CONTRACTOR to procure and maintain the required insurance shall constitute a material
6 breach of contract upon which COUNTY may immediately terminate or suspend this Agreement.

7 A. Liability: Such insurance shall be endorsed naming the COUNTY of Los Angeles as an
8 additional insured and shall include:

9 1. General Liability insurance written on a commercial general liability form or on a
10 comprehensive general liability form covering the hazards of premises/operations,
11 contractual, independent contractors, advertising, products/completed operations,
12 broad form property damage, and personal injury with a combined single limit of not
less than \$1,000,000 per occurrence.

13 a. If written with an annual aggregate limit, the policy limit should be three times
14 the above required occurrence limit.

15 b. If written on a claims made form, the CONTRACTOR shall be required to
16 provide an extended two year reporting period commencing upon termination
17 or cancellation of this agreement.

18 2. Comprehensive Auto Liability endorsed for all owned, non-owned, and hired vehicles
19 with a combined single limit of not less than \$300,000 per occurrence.

20 B. Worker's Compensation insurance in an amount and form to meet all applicable requirements
21 of the Labor Code of the State of California, including Employer's Liability with a \$1,000,000
22 limit, covering all persons the CONTRACTOR is legally required to cover.

1 C. Performance Surety: Such surety may be provided by one of the following forms and
2 conditioned upon faithful performance and satisfactory completion of services by
3 CONTRACTOR.

- 4 1. A Certificate of Deposit or an Irrevocable Letter of Credit payable to the COUNTY
5 upon demand and in an amount not less than \$500 per contract, but not to exceed
6 \$1,000.

7 **12. TERMINATION FOR CONTRACTOR'S DEFAULT**

8 A. COUNTY may, subject to the provisions outlined below, by written notice of default to
9 CONTRACTOR, terminate the whole or any part of this Agreement in any one of the
10 following circumstances:

- 11 1. If CONTRACTOR fails to perform the service within the specified time or any
12 extension thereof: or
13 2. If CONTRACTOR fails to perform any of the other provisions of this Agreement, or
14 so fails to make progress as to endanger performance of the Agreement in accordance
15 with its terms, and in either of these two circumstances does not cure such failure
16 within a period of ten (10) calendar days (or such longer period as the COUNTY may
17 authorize in writing) after receipt of notice from specifying such failure.

18 B. In the event COUNTY terminates this Agreement in whole or in part as provided in this
19 section, COUNTY may procure, upon such terms and in such manner as COUNTY may deem
20 appropriate, services similar to those terminated and CONTRACTOR shall be liable to
21 COUNTY for any excess costs for such similar services.

22 **13. ADDITIONAL TERMINATION PROVISIONS**

A. In addition to the termination provisions set forth in paragraph 11, the COUNTY may

1 terminate this Agreement in the event of the occurrence of any of the following:

- 2 1. INSOLVENCY OF THE CONTRACTOR: The CONTRACTOR shall be deemed to
- 3 be insolvent if it has ceased to pay its debts in the ordinary course of business or
- 4 cannot pay its debts as they become due, whether he has committed an act of
- 5 bankruptcy or not, and whether insolvent within the meaning of the Federal
- 6 Bankruptcy law or not;
- 7 2. The filing of a voluntary petition to have the CONTRACTOR declared bankrupt;
- 8 3. The appointment of a Receiver or Trustee for the CONTRACTOR;
- 9 4. The execution by the CONTRACTOR of an assignment for their benefit of creditors;
- 10 5. Failure of the CONTRACTOR to report bankruptcy proceedings to the COUNTY
- 11 within 14 days.

12 B. The rights and remedies of the COUNTY provided in this clause shall not be exclusive and

13 are in addition to any other rights and remedies provided by law or under this Agreement.

14 **14. LIMITATION OF COUNTY'S OBLIGATION DUE TO NON-APPROPRIATION OF FUNDS**

15 Notwithstanding any other provision of this Agreement, COUNTY shall not be obligated for

16 CONTRACTOR's performance hereunder or by any provision of this Agreement during any of

17 COUNTY's future fiscal years unless and until COUNTY's Board of Supervisors appropriates funds

18 applicable to this Agreement in COUNTY's budget for each such future fiscal year.

19 In the event that funds are not appropriated for such purpose, then this Agreement shall terminate as

20 of June 30 of the last fiscal year for which funds were appropriated. COUNTY shall notify

21 CONTRACTOR in writing of any such non-allocation of funds at the earliest possible date.

22 **15. GOVERNING LAW/VENUE**

This Agreement shall be construed in accordance with any governed by the laws of the State of

California Health and Safety Code, the Los Angeles Fire Code, California Government Code and various city codes and ordinances. Any action brought by either party on this Agreement shall be brought in the Los Angeles Superior Court.

16. INCLUSION OF OTHER LAWS/CLAUSES

CONTRACTOR agrees that each and every provisions of law and clause required to be inserted in the Agreement shall be deemed to be inserted herein and this Contract shall be read and be enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

17. NONDISCRIMINATION IN EMPLOYMENT

- A. By signature to this Agreement, CONTRACTOR certifies and agrees that all persons employed by such firm, its affiliate, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, color, religion, ancestry, national origin, age, sex, age, or physical or mental disability, marital status, or political affiliation and in compliance with all anti-discrimination laws of the United States of America and the State of California. CONTRACTOR further certifies and agrees that it will deal with its subcontractors, bidders or vendors without regard to or because of race, religion, ancestry, national origin, sex, age, or physical or mental disability, marital status, or political affiliation.
- B. CONTRACTOR shall allow the COUNTY access to its employment records during the regular business hours to verify compliance with these provisions when so requested by the COUNTY.
- C. If the COUNTY finds that any of the above provisions have been violated, the same shall constitute a material breach of contract upon which the COUNTY may determine to cancel,

1 terminate, or suspend the contract in accordance with paragraph 11 herein.

2 D. The parties agree that in the event the CONTRACTOR violates the anti-discrimination
3 provisions of the contract, the COUNTY shall, at its option, be entitled to a sum of ten (10)
4 percent of the contract amount or one thousand dollars (\$1000), whichever is greater, as
5 damages in lieu of canceling, terminating or suspending the contract pursuant to paragraph 11.

6 **18. ASSURANCE OF COMPLIANCE WITH CIVIL RIGHTS LAWS**

7 CONTRACTOR hereby assures that it will comply with Subchapter VI of the Civil Rights Act of
8 1964, 42 U.S.C. Sections 2000e(1) through 2000e (17), to the end that no person shall, on grounds of
9 race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political
10 affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be
11 otherwise subject to discrimination under this Agreement or under any project, program, or activity
supported by this Agreement.

12 **19. EMPLOYMENT ELIGIBILITY VERIFICATION**

13 CONTRACTOR warrants that it fully complies with all statutes and regulations regarding the
14 employment eligibility of aliens and others, and that all persons performing services under this
15 Agreement are eligible for employment in the United States. CONTRACTOR represents that it has
16 secured and retained all required documentation verifying employment eligibility of its subject
17 personnel. CONTRACTOR shall secure and retain verification of employment eligibility from any
18 new personnel in accordance with the applicable provisions of law. CONTRACTOR shall indemnify,
19 defend and hold COUNTY harmless from any employer sanctions or other liability which may be
20 assessed against COUNTY or CONTRACTOR.

21 **20. "CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT
COMPLIANCE PROGRAM"**

22 CONTRACTOR acknowledges that COUNTY has established a goal of ensuring that all individuals

1 who benefit financially from COUNTY through contract are in compliance with their court-ordered
2 child, family and spousal support obligations in order to mitigate the economic burden otherwise
3 imposed upon COUNTY and its taxpayers. As required by COUNTY'S Child Support Compliance
4 Program (County Code Chapter 2.200) and without limiting CONTRACTOR'S duty under this
5 contract to comply with all applicable provisions of law, CONTRACTOR warrants that it is now in
6 compliance and shall during the term of this contract maintain compliance with employment and wage
7 reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and
8 California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served
9 Wage and Earnings Withholding Orders or District Attorney Notices of Wage and Earnings
10 Assignment for Child or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and
11 Family Code Section 5246(b).

11 **21. TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN COMPLIANCE WITH**
12 **COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM**

13 Failure of CONTRACTOR to maintain compliance with the requirements set forth in paragraph 20
14 "CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT
15 COMPLIANCE PROGRAM" shall constitute a default by CONTRACTOR under this contract.
16 Without limiting the rights and remedies available to COUNTY under any other provision of this
17 contract, failure to cure such default within 90 days of notice by the Los Angeles County District
18 Attorney shall be grounds upon which the County Board of Supervisors may terminate this contract
19 pursuant to paragraph 12 "TERMINATION FOR CONTRACTOR'S DEFAULT."

19 **22. COUNTY'S QUALITY ASSURANCE PLAN**

20 The County or its agent will evaluate Contractor's performance under this agreement on not less than
21 an annual basis. Such evaluation will include assessing Contractor's compliance with all contract
22 terms and performance standards. Contractor deficiencies which County determines are severe or

continuing and that may place performance of the agreement in jeopardy if not corrected will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by the County and Contractor. If improvement does not occur consistent with the corrective action measures, County may terminate this agreement or impose other penalties as specified in this agreement.

23. CONTRACT DOCUMENT INCORPORATED

The Contract entered in by this Agreement consists of the following Contract documents, all of which are component parts of the Contract as if herein set out in full or attached hereto:

Invitation for Bids (IFB) dated February 2005
Bid Award Letter

All of the above-named contract documents are intended to be complementary. Work required by one of the above-named contract documents and not by other shall be done as if required by all.

24. MAXIMUM CONTRACT AMOUNT

COUNTY'S maximum obligation under this Agreement is **\$11,000.00** including all fees and expenses. (See attached Appendix A.) Any services provided by CONTRACTOR or expenses incurred in connection with this Agreement which exceed this amount shall be a gratuitous effort by CONTRACTOR for which COUNTY shall have no liability. The Agricultural Commissioner may increase the COUNTY'S maximum obligation under this Agreement by 10% of the total contract amount in the event additional services from the CONTRACTOR are required.

Any other change effecting the scope of work, price or other terms and conditions under this agreement must be approved by the County Board of Supervisors or Agricultural Commissioner.

CONTRACTOR shall maintain a system of record keeping that will allow CONTRACTOR to determine when it has incurred seventy-five percent (75%) of the total contract authorization under this Contract. Upon occurrence of this event, CONTRACTOR shall send written notification to the

Agricultural Commissioner at the address herein provided in paragraph 11.

25. CONTRACTOR RESPONSIBILITY AND DEBARMENT

A. Responsible Contractor

1. A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the Contract. It is the COUNTY'S policy to conduct business only with responsible Contractors.

B. Chapter 2.202 of the County Code

1. The CONTRACTOR is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the COUNTY acquires information concerning the performance of the CONTRACTOR on this or other Contracts which indicates that the CONTRACTOR is not responsible, the COUNTY may, in addition to other remedies provided in the Contract, debar the CONTRACTOR from bidding or being awarded, and/or performing work on County Contracts for a specified period of time not to exceed three (3) years, and terminate any or all existing Contracts the CONTRACTOR may have with the COUNTY.

C. Non-responsible Contractor

The COUNTY may debar a CONTRACTOR if the Board of Supervisors finds, in its discretion, that the CONTRACTOR has done any of the following: (1) violated a term of a Contract with the COUNTY, (2) committed an act or omission which negatively reflects on the CONTRACTOR'S quality, fitness or capacity to perform a Contract with the COUNTY or any other public entity, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business

1 honesty, or (4) made or submitted a false claim against the COUNTY or any other public
2 entity.

3 D. If there is evidence that the CONTRACTOR may be subject to debarment, the Department
4 will notify the CONTRACTOR in writing of the evidence which is the basis for the proposed
5 debarment and will advise the CONTRACTOR of the scheduled date for a debarment hearing
6 before the Contractor Hearing Board.

7 E. The Contractor Hearing Board will conduct a hearing where evidence on the proposed
8 debarment is presented. The CONTRACTOR and/or the CONTRACTOR'S representative
9 shall be given an opportunity to submit evidence at that hearing. After the hearing, the
10 Contractor Hearing Board shall prepare a proposed decision, which shall contain a
11 recommendation regarding whether the CONTRACTOR should be debarred, and, if so, the
12 appropriate length of time of the debarment. The Contractor and the Department shall be
13 provided an opportunity to object to the tentative proposed decision prior to its presentation
14 to the Board of Supervisors.

15 F. After consideration of any objections, or if no objections are submitted, a record of the
16 hearing, the proposed decision, and any other recommendation of the Contractor Hearing
17 Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have
18 the right to modify, deny, or adopt the proposed decision and recommendation of the Hearing
19 Board.

20 G. These terms shall also apply to Subcontractors of County Contractors.

21 **26. NOTICE TO EMPLOYEES REGARDING THE SAFELY SURRENDERED BABY LAW**

22 The Contractor shall notify and provide to its employees, and shall require each subcontractor to notify
and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its

1 implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet
2 is set forth in Appendix C of the IFB and is also available on the Internet at www.babysafela.org for
3 printing purposes.

4 IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed by their fully
5 authorized officers as of the dates set for below:

6 COUNTY OF LOS ANGELES

7 By _____
Chair, Board of Supervisors

8 Attest: Violet Varona-Lukens
9 Executive Officer-Clerk of
the Board of Supervisors

10 By _____
11 Deputy

CONTRACTOR

12 APPROVED AS TO FORM
13 BY COUNTY COUNSEL:

Company Name

14 RAYMOND G. FORTNER, JR.

By _____

Date _____

15 By _____
16 Deputy

Address _____

APPENDIX A

**Gardner Tractor Service
WEED ABATEMENT TRACTOR CONTRACT**
(upon Board approval through June 30, 2006)

<u>Contract Awarded</u>	<u>Units/Parcels</u>	<u>Unit Price</u>	<u>Total Amount</u>
Zone 6, Hourly Mowing	100 hrs	\$110.00	\$11,000.00
Total Amount of Contract Awarded			<u>\$11,000.00</u>

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